

## Update: Crime Victim Rights Manual

### CHAPTER 4

#### Protection From Revictimization

##### 4.12 Criminal Offenses That May Be Committed While Threatening or Intimidating a Victim

###### A. “Obstruction of Justice”

Insert the following language at the end of the first full paragraph in Section 4.12(A) on p 66:

Regarding the interplay between statutory and common-law obstruction of justice, see *People v Greene*, \_\_\_ Mich App \_\_\_ (2003), where the Court of Appeals, in applying principles of statutory construction to the witness tampering statute in MCL 750.122, stated: “[A]s we examine the language used in MCL 750.122(6), we are mindful that the precise statutory description of the prohibited criminal conduct, not necessarily notions of witness tampering that existed at common law, under other statutes, or even under other subsections of MCL 750.122, guides our interpretation.” *Id.* at \_\_\_\_\_. In a footnote, the Court also held that a statement made by two previous Court of Appeals opinions that “the Legislature codified the common law crime of obstruction of justice” was merely dicta and did not have the force of law because the statute was not at issue in either of those two cases. *Id.* at \_\_\_\_\_ n 6. As a result, the Court concluded: “[W]e are not persuaded that, contrary to the plain language in the statute . . . , MCL 750.122(6) [interference] follows any common law approach to obstruction of justice that would require threats, intimidation, or physical interference as elements of this offense.” *Id.*

###### 1. Statutory Offenses

Insert the following language after the last full paragraph on p 67:

For a published Michigan Court of Appeals opinion on the statutory interpretation of the witness tampering statute in MCL 750.122, and specifically subsection 6 governing “interference,” see *People v Greene*, \_\_\_ Mich App \_\_\_ (2003). In this case, the defendant, who was initially charged with killing an unborn quick child after assaulting his pregnant girlfriend, was later charged with witness tampering under MCL 750.122(6) for making a three-way telephone conversation from jail between himself, an acquaintance, and his girlfriend. During this conversation, defendant’s girlfriend indicated that she had received a subpoena to appear at a hearing (presumably the preliminary examination) and was fearful of the consequences of failing to appear. Defendant, although not threatening or intimidating her, dismissed her fears, telling her not to come and “just stay gone until the court closes about 5:00.” He also told her that failing to appear would only result in a \$150.00 fine, and that the subpoena was ineffective. In concluding that the district court properly bound defendant over for trial, the Court of Appeals found that defendant’s efforts through his three-way telephone conversation created a question of fact regarding whether his conduct fit the attempt language in MCL 750.122(6). *Id.* at \_\_\_\_\_. The Court also articulated the elements of “interference” under MCL 750.122(6) as follows:

“[T]o prove that a defendant has violated MCL 750.122(6), . . . the prosecutor must prove that the defendant (1) committed or attempted to commit (2) an act that did not consist of bribery, threats or intimidation, or retaliation as defined in MCL 750.122 and applicable case law, (3) but was any act or attempt that was done willfully (4) to impede, interfere with, prevent, or obstruct (5) a witness’s ability (6) to attend, testify, or provide information in or for a present or future official proceeding (7) having the knowledge or the reason to know that the person subjected to the interference could be a witness at any official proceeding. In the last part of the definition we use the word interference to include all types of conduct proscribed in subsection 6.” *Id.* at \_\_\_\_\_.

## CHAPTER 8

### The Crime Victim at Trial

#### 8.6 Special Protections for Child or Developmentally Disabled Victim-Witnesses

##### D. Taking, Using, and Disclosing Videorecorded Statements

Insert this new subsection at the end of Section 8.6 on p 167:

Effective March 31, 2003, 2002 PA 604 amended MCL 600.2163a, and 2002 PA 625 amended MCL 712A.17b, by revising and adding new provisions on the use and disclosure limitations of videorecorded statements of witnesses. The following details the salient revisions and additions.

A “videorecorded statement,” which replaces the word “videotaped statement,” specifically excludes videorecorded depositions from its definition, as follows:

“‘Videorecorded statement’ means a witness’s statement taken by a custodian of the videorecorded statement as provided in subsection (5). Videorecorded statement does not include a videorecorded deposition taken as provided in subsections (17) and (18).” MCL 600.2163a(1)(c) and MCL 712A.17b(1)(c).

A “custodian of the videorecorded statement” means any of the following:

- The family independence agency;
- Investigating law enforcement agency;
- Prosecuting attorney;
- Department of attorney general; or
- Another person designated under the county protocols established as required by MCL 722.628. MCL 600.2163a(1)(a) and MCL 712A.17b(1)(a).

A videorecorded statement is subject to a court protective order to protect the witness’s privacy if the statement becomes part of the court record. MCL 600.2163a(11) and MCL 712A.17b(10).

Unless otherwise provided in MCL 600.2163a and MCL 712A.17b, a videorecorded statement must not be copied or

reproduced in any manner and is exempt from disclosure under Michigan's Freedom of Information Act (FOIA) and under another statute or Michigan court rule governing discovery. However, the production or release of a transcript of the videorecorded statement is not prohibited. MCL 600.2163a(12) and MCL 712A.17b(11). In addition, if authorized by the prosecuting attorney in the county where the videorecorded statement was taken, "a videorecorded statement may be used for purposes of training the custodians of the videorecorded statement in that county on the forensic interview protocol implemented as required by [MCL 722.628]." MCL 600.2163a(9) and MCL 712A.17b(8).

A custodian of the videorecorded statement may release or consent to the release or use of a videorecorded statement or copies of the videorecorded statement to the following entities:

- Law enforcement agency;
- An agency authorized to prosecute the criminal case; and
- An entity that is part of the county protocols established under MCL 722.628. MCL 600.2163a(8) and MCL 712A.17b(7).

In prosecutions of adult offenders, the defense has the right to view and hear a videorecorded statement before the preliminary examination, and, upon request, the prosecutor must also provide the defense with reasonable access to the videorecorded statement at a reasonable time before the defendant's pretrial or trial. MCL 600.6123a(8). Additionally, to prepare for a court proceeding, the court may order that a copy of the videorecorded statement be given to the defense under protective conditions, "including, but not limited to, a prohibition on the copying, release, display, or circulation of the videorecorded statement." *Id.* In juvenile adjudications, the defense has the right to view and hear a videorecorded statement "at a reasonable time before it is offered into evidence." MCL 712A.17b(7). Additionally, to prepare for a court proceeding, the court may order that a copy of the videorecorded statement be given to the defense under protective conditions, "including, but not limited to, a prohibition on the copying, release, display, or circulation of the videorecorded statement." *Id.*

In prosecutions of adult offenders, a videorecorded statement may be used to support "a factual basis for a no contest plea or to supplement a guilty plea," in addition to its other statutorily authorized uses, i.e., pretrial proceedings (except preliminary examinations), impeachment purposes, and sentencing purposes. MCL 600.6123a(6)(d). In juvenile proceedings, a videorecorded

statement “shall be admitted at all proceedings except the adjudication stage.” MCL 712A.17b(5).

The unauthorized release or consent to release of a videorecorded statement by an individual, including, but not limited to, a custodian of the videorecorded statement, the witness, or the witness’s parent, guardian, guardian ad litem, or attorney is a misdemeanor punishable by imprisonment for not more than 93 days or a maximum \$500.00 fine, or both. MCL 600.2163a(10), (20) and MCL 712A.17b(9), (19).

## CHAPTER 12

### The Relationship Between Criminal or Juvenile Proceedings & Civil Actions Filed by Crime Victims

#### 12.2 Statutes of Limitations for Tort Actions

Insert the following language at the end of the third bulleted paragraph in Section 12.2 on p 297:

\*A “dating relationship” means “frequent, intimate associations primarily characterized by the expectation of affectional involvement. Dating relationship does not include a casual relationship or an ordinary fraternization between 2 individuals in a business or social context.” MCL 600.5805(15).

Effective March 31, 2003, 2002 PA 715 amended MCL 600.5805 by adding subparagraph (4) which establishes a five-year limitations period for assault and battery causes of action in which there is, or was, a dating relationship\* between the defendant and victim. This five-year limitations period applies to any cause of action arising on or after January 1, 2003 and to any cause of action in which the limitations period in MCL 600.5805(2) (domestic assault and battery with spouse or former spouse, resident or former resident, or child in common) has not already expired as of January 1, 2003.

Insert the following language at the end of the last bulleted paragraph on p 297:

Effective March 31, 2003, 2002 PA 715 amended MCL 600.5805 by adding subparagraph (12) which establishes a five-year limitations period for causes of action for injuries to a person or property of a domestic partner where the plaintiff has or has had a dating relationship with the defendant. This five-year limitations period applies to any cause of action arising on or after January 1, 2003 and to any cause of action in which the limitations period in MCL 600.5805(2) (domestic assault and battery with spouse or former spouse, resident or former resident, or child in common) has not already expired as of January 1, 2003.

Because of the added statutory subparagraphs and the redesignation of subsequent subparagraph numbers in MCL 600.5805, please note the following redesignated subparagraph number in the bulleted list on p 297:

: “The period of limitations is 3 years after the time of the death or injury for all other actions to recover damages for the death of a person, or for injury to a person or property.” MCL 600.5805(10).